

HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

HON'BLE Dr. JUSTICE SHAMEEM AKTHER

WRIT APPEAL No.419 OF 2017

JUDGMENT: (Per Hon'ble The Acting Chief Justice Ramesh Ranganathan)

This Appeal, under clause 15 of Letters Patent, is preferred against the order passed by the learned Single Judge in Writ Petition No.6087 of 2017 dated 14.03.2017. The impleaded 5th respondent in the writ petition is the appellant herein. The 1st respondent herein filed W.P. No.6087 of 2017 seeking a *mandamus* to declare the action of the District Collector, Siddipet District, in passing the order dated 16.02.2017, under Section 249(6) of the Andhra Pradesh Panchayat Raj Act, 1994 (for short, 'the Act'), and in suspending the 1st respondent-writ petitioner from the post of Sarpanch of Kothur Gram Panchayat, as illegal and arbitrary.

Facts, as noted in the order under appeal, are that the 1st respondent-writ petitioner, in reply to the show-cause notice issued by the District Collector on 04.02.2017 (a copy of which the 1st respondent-writ petitioner received on 07.02.2017), submitted her explanation on 14.02.2017; thereafter the District Collector passed an order on 16.02.2017 suspending the 1st respondent-writ petitioner from the office of Sarpanch, for a period of three (3) months, under Section 249(6) of the Act.

Before the learned Single Judge, the 1st respondent-writ petitioner contended that the order of suspension was arbitrary and illegal; it was contrary to principles of natural justice; without supplying a copy of the report dated 03.02.2017, said to have been submitted by the Panchayat

Extension Officer, Siddipet, the petitioner was placed under suspension; in her explanation dated 14.02.2017, the 1st respondent-writ petitioner stated that the records of the Gram Panchayat Office was under the custody of the Panchayat Secretary; and the same was not considered by the District Collector. The 1st respondent-writ petitioner relied on a Division Bench judgment of this Court in ***D. Sathi Reddy Vs. Commissioner, Panchayat Raj, A.P., Hyderabad and others***¹. On the other hand it was contended, on behalf of the respondents, that the action taken by the District Collector was strictly in accordance with the provisions of Section 249(6) of the Act; the District Collector had issued the show-cause notice, and had afforded the petitioner an opportunity of filing her explanation thereto; and, therefore, principles of natural justice had been complied with.

In the order under Appeal, the learned Single Judge held that the petitioner was a representative of the people, and an elected Sarpanach; the opportunity, as mandated under the proviso to Section 249(6), was not a mere formality; any action which would undermine the image of public representatives should be avoided; the authorities concerned must exercise their powers with great care and caution; the respondents had not furnished a copy of the enquiry report, said to have been submitted by the Panchayat Extension Officer on 03.02.2017; and, in view of the Division Bench judgment of this Court in ***Sathi Reddy***¹, the impugned order necessitated being set-aside. The matter was remanded to the District Collector for his fresh consideration in accordance with law, after giving notice and an opportunity of hearing to the petitioner, and after furnishing a copy of report of the Panchayat Extension Officer dated 03.02.2017.

¹ 1999 (5) ALD 681 (DB)

As noted hereinabove, a show-cause notice was issued by the District Collector on 04.02.2017 informing the 1st respondent-writ petitioner that the Panchayat Extension Officer had completed inspection of the records, and had submitted his report on 03.02.2017; and, on inspection of the Gram Panchayat cash book vouchers and the invoices of Gram Panchayat office from 2013-14 to 2016-17, the objectionable expenses were detailed in the show-cause notice.

By his proceedings dated 04.02.2017, the District Collector directed the 1st respondent-writ petitioner to show-cause why action under Section 249(6) should not be taken against her for misusing funds of Kothur Gram Panchayat, without following rules and regulations, and in addition for having misused funds of the 13th and 14th Finance Commission grants, in all for a sum of Rs.22,02,145/-. It is evident from the show-cause notice that the alleged expenditure for Rs.15,77,321/- was not properly accounted for, and the amount was spent by way of self cheques without any bill, and without any entries in the stock register or in the M-book. The show-cause notice highlights several other deficiencies including failure to maintain the Money Value Register, Stock Register and other registers. The 1st respondent-writ petitioner filed her reply thereto on 14.02.2017 which, thereafter, resulted in the order, impugned in the writ petition, being passed on 16.02.2017.

In the impugned order, the District Collector has referred to the petitioner's explanation, and to G.O.Ms. No.432 dated 30.10.2013 which stipulates that no item of expenditure should be sanctioned or payment made by the Gram Panchayat unless the following conditions were fulfilled: a) passage of resolution by the Gram Panchayat; b) existence of administrative sanction, technical sanction, measurement of work (M

books), check measurement etc., if it is related to the execution of works in Gram Panchayat; and that payment should be made only by way of a cheque drawn in favour of the parties; self cheques should not be drawn, unless otherwise permitted to do so for any particular purpose; and, on the other hand, Rs.22,20,145/- was misused by using self cheques and without producing any vouchers, bills, musters, administrative sanctions and measurement books. The District Collector suspended the Sarpanch for a period of three (3) months, under Section 249(6) of the Act, for misusing the funds of the Kothur Gram Panchayat without following rules and regulations.

Section 249(1) of the Act confers power on the District Collector to remove the Sarpanch from office, after giving him an opportunity to submit his explanation, if he is of the opinion that (i) the Sarpanch has wilfully omitted or refused to carry out the orders of the Government for the proper working of the concerned local body; or (ii) abused his position or the powers vested in him; or (iii) is guilty of misconduct in the discharge of his duties; or (iv) has persistently defaulted in the performance of his functions and duties entrusted to him under the Act to the detriment of the functioning of the concerned local body, or has become incapable of such performance.

While Section 249(1) confers power on the District Collector to remove the Sarpanch, after giving him the opportunity of submitting his explanation to the allegations levelled against him, provided the conditions stipulated in clauses (i) to (iv) therein are fulfilled, Section 249(6) confers power on the District Collector to suspend the Sarpanch from Office for a period not exceeding three (3) months. Under Section 249(6), if the District Collector is of the opinion that the Sarpanch has wilfully omitted or

refused to carry out the orders of the Government for the proper working of the concerned local body, or has abused his position or the powers vested in him, and the further continuance of such a person in office would be detrimental to the interests of the concerned local body, the District Collector is empowered, by order, to suspend the Sarpanch from office for a period not exceeding three (3) months, pending investigation into the said charges, and action being taken under the other provisions of Section 249 of the Act.

The power, conferred on the District Collector to suspend a Sarpanch from office, is “pending investigation” into the charges levelled against him. Unlike Section 249(1) which confers power on the District Collector to remove a Sarpanch from office (which order is permanent in nature), the power exercised by the District Collector under Section 249(6) is only to suspend him for a period not exceeding three (3) months and which, in terms of the second proviso thereto, shall not be extended beyond a further period of three months *i.e.*, for a total period of six (6) months.

It is no doubt true that the proviso to Section 249(6) also requires the person concerned (the Sarpanch) to be afforded the opportunity of making a representation against the proposed action. As the Sarpanch is a public representative, and as any action to suspend him from office should not be taken in a casual manner, the legislature has, in its wisdom, stipulated that, before the Sarpanch is suspended from office, he shall be given an opportunity of making a representation against the proposed action. It is for this reason that the first proviso to Section 249(6) requires an opportunity being afforded to the Sarpanch to show-cause why he

should not be suspended from office for a period not exceeding three (3) months.

In the present case, a notice was issued to the Sarpanch on 04.02.2017, and the 1st respondent-writ petitioner availed the opportunity of being heard by submitting her reply thereto on 14.02.2017. It is only after considering her explanation dated 14.02.2017 was the Sarpanch suspended from office. The distinction between removal of the Sarpanch from office under Section 249(1), and in placing him under suspension for a period not exceeding three (3) months under Section 249(6), must be borne in mind. Exercise of power under Section 249(1), to remove the Sarpanch from office, would result in a vacancy being caused in the office of the Sarpanch requiring it to be filled up in terms of the other provisions of Section 249 of the Act. Unlike an order removing the Sarpanch from office under Section 249(1), the power conferred on the District Collector under Section 249(6) is only to suspend the Sarpanch, for a period not exceeding three (3) months, pending investigation into the charges. While both Sections 249(1) and 249(6) require an opportunity to be afforded to the Sarpanch, the opportunity afforded under Section 249(1) is to explain the charges levelled against her, while the opportunity afforded under the first proviso to Section 249(6) is to make a representation against the proposed action ie to suspend the Sarpanch from office for a limited duration. As the order of suspension is to remain in force, pending investigation, that too only for three months in the first instance, the question of an inquiry being caused before placing the Sarpanch under suspension, or furnishing her a copy of the enquiry report, does not arise. The report of the Panchayat Extension Officer dated 03.02.2017 is merely a report submitted pursuant to a preliminary inspection of the records of

the Gram Panchayat being caused, and is a prelude for initiating action against the Sarpanch, including placing her under suspension.

During the course of enquiry, to be caused in terms of Section 249(1) of the Act, the District Collector would be obligated to furnish her a copy of the report of the Panchayat Extension Officer dated 03.02.2017, if reliance is placed thereupon to establish the charges levelled against the 1st respondent-writ petitioner. Failure to furnish this report would, however, not render the order of suspension illegal, more so as the show-cause notice dated 04.02.2017 (a copy of which the petitioner received on 07.02.2017) refers extensively to the allegations of misuse of funds of the Kothur Gram Panchayat for Rs.22,20,145/-.

Reliance placed by the 1st respondent-writ petitioner on the Division Bench judgment of this Court in **Sathi Reddy¹**, is misplaced. In **Sathi Reddy¹**, the Division Bench examined the scope of Section 249(1) of the Act and, after extracting the said provision in its entirety, observed:-

“..... It is clear that except in situations mentioned at (a) and (e) above, the Collector may cause an enquiry to be done by the officials of the Panchayat Raj Department. If the enquiry report is the basis for issuing a show-cause notice, there cannot be an adequate opportunity for the Sarpanch to submit the explanation without a copy of the enquiry report being supplied. Therefore, the words “after giving him an opportunity for explanation” appearing in sub-section (1) of Section 249 of the Act should be interpreted as casting a duty on the District Collector to supply a copy of the enquiry report to the Sarpanch. Further, the sub-section (1) gives a right to the Sarpanch to receive a copy of the enquiry report even without there being a demand by him.”

As noted hereinabove, the opportunity to submit an explanation, under Section 249(1), is distinct and different from the opportunity afforded

to the Sarpanch to submit her representation, under the proviso to Section 249(6) of the Act, against the proposed action to suspend her from office pending investigation.

While we are satisfied that the order of the learned Single Judge must be set-aside and interference with the order of the District Collector, placing the 1st respondent-writ petitioner under suspension for a period of three (3) months is not justified, we must also bear in mind that the petitioner is an elected public representative heading the Gram Panchayat, and it would be in everybody's interest that the enquiry, into the allegations levelled against her, is caused at the earliest to ensure among others, that the Sarpanch is not kept under suspension for an indefinite period (the 2nd proviso to Section 249(6) provides an upper limit of six (6) months). While setting-aside the order of the learned Single Judge, we consider it appropriate to direct the District Collector, Siddipet to take action in terms of Section 249(1) of the Act, and pass final orders at the earliest and in any event on or before 16.05.2017 when the initial period of suspension of three (3) months expires.

Subject to the above observations, the order under Appeal is set-aside. The Writ Appeal is, accordingly, allowed. As a sequel, pending miscellaneous petitions, if any, shall stand closed. No order as to costs.

RAMESH RANGANATHAN, ACJ

Dr. SHAMEEM AKTHER, J

Date: 06-04-2017.

Note: Issue C.C. by 10.04.2017.
B/o.DSH/SIVA

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(Judgment of the Division Bench delivered by
Hon'ble the Acting Chief Justice Ramesh Ranganathan)

Date. 06-04-2017

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